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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

Telephone Number:

Refer Reply To:  
CC:PSI:B02  
PLR-136082-10  
Date: February 7, 2011

### Legend

X =

A =

**B =**

$$\underline{Y} =$$

Trust =

State =  
Date 1 =

Date 2 =

Dear \_\_\_\_\_ :

This letter responds to a letter dated August 24, 2010, submitted by X's authorized representative on behalf of X, requesting inadvertent termination relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was formed under the laws of State and elected to be treated as an S corporation on Date 1. Before Date 2, the sole shareholder of X for federal tax purposes was A, who owned X stock through Y, a disregarded entity wholly owned by A. B is A's spouse. On Date 2, A transferred his interest in Y to A and B as co-trustees of Trust. Trust is a joint living revocable trust that created separate trust shares for each of A and B. Trust is a trust, all of which is treated (under Subpart E of Part 1 of Subchapter J of Chapter 1) as owned by an individual who is a citizen or resident of the United States. During subsequent sale negotiations, A discovered that the transfer of Y to Trust may have caused an inadvertent termination of X's S election.

X represents that the above transactions were not motivated by tax avoidance or retroactive tax planning. During the years at issue, all tax returns for X were filed on Form 1120S, and A included all items from X on his tax returns, which he jointly filed with B. X and A have continued to treat X as an S corporation at all times. X, and all shareholders of X agree to make any adjustments (consistent with the treatment of X as an S corporation) that the Secretary may require.

Section 1361(a)(1) of the Code defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that a "small business corporation" cannot have as a shareholder a person (other than an estate and other than a trust described in § 1361(c)(2) or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(c)(2) provides, in part, that for purposes of § 1361(b)(1)(B), a trust, all of which is treated (under Subpart E of Part 1 of Subchapter J of Chapter 1) as owned by an individual who is a citizen or resident of the United States, may be an S corporation shareholder.

Section 1361(d)(3) provides, inter alia, that a substantially separate and independent share of a trust within the meaning of § 663(c) shall be treated as a separate trust for purposes of § 1361(d) and § 1361(c).

Section 663(c) provides that if a single trust has more than one beneficiary, substantially separate and independent shares of different beneficiaries are treated as separate trusts for the sole purpose of determining the amount of distributable net income in the application of sections 661 and 662. The existence of substantially separate and independent shares and the manner of treatment as separate trusts are determined in accordance with regulations.

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the taxable year for which a corporation is an S corporation) such corporation ceases to be a small business

corporation. A termination of an S corporation election under § 1362(d)(2) is effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under paragraph (2) or (3) of § 1362(d), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the information submitted and the representations made, we conclude that X's S corporation election may have terminated on Date 2, the date of A's transfer of his Y interest to A and B as co-trustees of Trust. We also conclude that any termination was inadvertent within the meaning of § 1362(f), and that under the provisions of § 1362(f), X will be treated as an S corporation from Date 2, and thereafter, provided that X's S election was valid and was not otherwise terminated.

Except as specifically ruled upon above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, no opinion is expressed on whether X was otherwise eligible to be treated as an S corporation.

This ruling is directed only to the taxpayer who requested it. Section § 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Melissa C. Liquerman  
Chief, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: (2)

Copy of this letter  
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